Filed 2/15/11 In re J.C. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.C., a Person Coming Under the Juvenile Court Law.	B224498 (Los Angeles County Super. Ct. No. PJ46245)
THE PEOPLE, Plaintiff and Respondent, v. J.C., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Morton Rochman, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Eric E. Reynolds and Ana R. Duarte, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition alleging that minor and appellant J.C. was a person described in Welfare and Institutions Code section 602 after finding minor had used teargas, a misdemeanor violation of Penal Code section12403.7, subdivision (g). Minor was placed home on probation, but allowed to live with an aunt with her mother's permission.

The appeal presents one issue. Minor argues the trial court erred in admitting her statements to prove that she understood the wrongfulness of her conduct for purposes of Penal Code section 26 as interpreted in *In re Gladys R.* (1970) 1 Cal.3d 855 (*Gladys R.*), because minor exercised her right to remain silent under *Miranda v. Arizona* (1966) 384 U.S. 436 before her statements were made. We need not decide whether *Miranda* warnings apply to questioning to satisfy *Gladys R.* Assuming minor's statements were improperly admitted in violation of *Miranda*, the error was harmless beyond a reasonable doubt.

FACTS

Minor was born in October 1996. The charged incident occurred on April 6, 2010, meaning minor was 13 years six months old on the date of the alleged offense.

Minor's father told minor on April 6 that she had to go to school, and he would personally take her. When minor said she was not going to go to school, father told her he would take her "one way or another," meaning he would put her in the car. He was angry that she was not in school and was not willing to go with him.

Father took one step toward minor, intending to grab her by the hand to take her to the car. Before father could touch her, minor sprayed him in the face with pepper spray. Father did not see the pepper spray before it was used on him. After spraying father, minor attempted to run outside, but she was stopped by father, who called 911. Father had twice in the past grabbed minor in an effort to control her, but he never abused his daughter.

Minor was taken into custody at her home. She was present for part of father's explanation to responding officers of what had happened. While at the house, minor told officers she used pepper spray on her father because she was fearful he would hit her.

Minor was transported to the police station. Before questioning, she was advised of her *Miranda* rights by Officer Mark Robinson. Minor said she did not wish to talk about what had happened. Officer Robinson then questioned minor regarding her understanding of the wrongfulness of her actions for purposes of *Gladys R.*, *supra*, 1 Cal.3d 855. The officer specifically asked minor if she knew it was wrong to use pepper spray. On a written form, minor indicated she knew the difference between right and wrong and using pepper spray was an example of doing something that was wrong. Minor objected to admission of her statements regarding the wrongfulness of her actions on the basis the statements were obtained in violation of *Miranda*. The objection was overruled and minor's statements were admitted.

Minor testified that she had spent the night of April 5 sleeping in her mother's car because father would not allow her inside the house. She had run away from home five or six times. Minor felt father was overly protective of her. She was mad at father because he had cheated on her mother. She had told her mother she hated father. Once father went to work, minor went inside the house to shower. Father came home, entered her room, and said she had three minutes to get ready for school or he would drag her there. Minor said she would go with her mother. She did not want to go with father because he had once dragged her into the house by the neck and another time slammed her against the car.

Father appeared mad as he came toward her. Minor was afraid, as father had hit her before and she did not want to be hit again. Minor had pepper spray in her hand, behind her back. She used the pepper spray for three to five seconds on father's face because she feared father would hurt her more than the last time he used force on her. She had obtained the pepper spray about a week earlier from a friend because she knew father would be hitting her more. She had it with her when she was sleeping in the car.

She followed the directions on how to use it, including twisting the cap and pressing the button on the top.

DISCUSSION

Minor argues that once she expressly invoked her right to remain silent, Officer Robinson was required to cease questioning. Minor contends the *Gladys R.* inquiry that followed violated *Miranda*, and admission of her statements reflecting her understanding of the wrongfulness of her actions was prejudicial error under *Chapman v. California* (1967) 386 U.S. 18, 24. The Attorney General argues, in essence, that *Gladys R.* questioning is not interrogation for purposes of *Miranda*, but even if there were a *Miranda* violation, the error is harmless in light of the other admissible evidence establishing minor knew the wrongfulness of her conduct. We agree any error was harmless under the *Chapman* standard of review.

"Penal Code section 26 articulates a presumption that a minor under the age of 14 is incapable of committing a crime. (Pen.Code, § 26, subd. One.) To defeat the presumption, the People must show by 'clear proof' that at the time the minor committed the charged act, he or she knew of its wrongfulness. This provision applies to proceedings under Welfare and Institutions Code section 602. (*In re Gladys R., supra,* 1 Cal.3d at p. 867.)" (*In re Manuel L.* (1994) 7 Cal.4th 229, 231-232, fns. omitted (*Manuel L.*).) To sustain its burden, "the prosecution must present clear and convincing evidence that the minor knows the wrongfulness of his conduct in order to sustain a finding that he is a person falling within [Welfare and Institutions Code] section 602." (*Id.* at p. 234.)

In re Richard T. (1985) 175 Cal.App.3d 248, 252 held that *Miranda* applies to questioning regarding a minor's appreciation of the wrongfulness of conduct. However, the vitality of that portion of the *Richard T.* holding that *Miranda* applies to *Gladys R.* questions is debatable, as much of the reasoning of *Richard T.* was expressly overruled in the discussion of a related issue in *Manuel L., supra,* 7 Cal.4th at page 239, footnote 5.

We see no need to resolve the issue, however, as there is abundant evidence that minor knew her conduct was wrong.

The closer a minor is to 14 years old, the more likely that he/she is to appreciate the wrongfulness of criminal conduct. (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298; *In re Marven C.* (1995) 33 Cal.App.4th 482, 487; *In re Richard T., supra*, 175 Cal.App.3d at p. 254.) "A minor's knowledge of his[/her] act's wrongfulness may be inferred from the circumstances, such as the method of its commission or its concealment. (*In re Tony C.* (1978) 21 Cal.3d 888, 900.)" (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52.) Among the factors a court may consider in determining the sufficiency of the *Gladys R.* proof are "the minor's age, experience and understanding, as well as the circumstances of the offense including its method of commission and concealment (*In re Marven C., supra,* 33 Cal.App.4th at p. 487)." (*In re Jerry M., supra*, at p. 298.)

Minor was approaching her 14th birthday at the time of the charged incident. She obtained the pepper spray in advance of the attack, indicating an element of planning that belies a lack of capacity to appreciate the wrongfulness of her conduct. She obviously knew the use of force on another was wrong, as she complained about father using force on her in the past. Minor secreted the pepper spray behind her back when father demanded that she go to school, using it by surprise on him. Immediately after using the spray, minor attempted to depart her home, indicating she knew she had done something wrong. Minor had run away multiple times in the past and displayed defiance toward father's authority. We are satisfied there is no reasonable possibility of a result more favorable to minor even had her answers to the *Gladys R.* questions been suppressed.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.